

HOUSE BILL No. 1203

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-36; IC 35-50-2.

Synopsis: Death sentences sought on basis of race. Provides that if: (1) a defendant is charged with a murder for which the state seeks a death sentence; (2) the defendant makes a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence; and (3) the state fails to rebut the prima facie showing; the death sentence may not be imposed on the defendant. Specifies that a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence is established if evidence shows that: (1) in the county where the defendant was charged, death sentences are sought or imposed upon persons of one race with a frequency that is disproportionate to their representation among the total number of persons arrested for, charged with, or convicted of crimes for which the state may seek the death sentence; (2) in the county where the defendant was charged, death sentences are sought or imposed as punishment for the murder of victims who are members of one race with a frequency that is disproportionate to their representation among the total number of persons who are victims of crimes for which the state may seek the death sentence and that have resulted in criminal charges being filed by the state; or (3) racial considerations played a part in the state's decision to seek or impose the death sentence against the defendant. Requires the state to establish by clear and convincing evidence that identifiable and pertinent factors not based on race persuasively explain the state's decision to seek or impose the death sentence to rebut a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence.

Effective: July 1, 2001.

Crawford

January 9, 2001, read first time and referred to Committee on Courts and Criminal Code.



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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1203

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 35-36-9-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. This chapter ~~applies~~
3 **and IC 35-36-10 apply** when a defendant is charged with a murder for
4 which the state seeks a death sentence under IC 35-50-2-9.

5 SECTION 2. IC 35-36-10 IS ADDED TO THE INDIANA CODE
6 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2001]:

8 **Chapter 10. Determination That Death Sentence Was Sought on**
9 **Basis of Race**

10 **Sec. 1. This chapter and IC 35-36-9 apply when a defendant is**
11 **charged with a murder for which the state seeks a death sentence**
12 **under IC 35-50-2-9.**

13 **Sec. 2. If:**

14 **(1) a defendant makes a prima facie showing under this**
15 **chapter that racial considerations played a part in the state's**
16 **decision to seek or impose the death sentence on the**
17 **defendant; and**



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(2) the state fails to rebut the prima facie showing;
the death penalty may not be imposed on the defendant.

Sec. 3. (a) A prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence is established if evidence shows that:

(1) in the county where the defendant was charged, death sentences are sought or imposed upon persons of one (1) race with a frequency that is disproportionate to their representation among the total number of persons arrested for, charged with, or convicted of crimes for which the state may seek the death sentence under IC 35-50-2-9;

(2) in the county where the defendant was charged, death sentences are sought or imposed as punishment for the murder of victims who are members of one (1) race with a frequency that is disproportionate to their representation among the total number of persons who are victims of crimes:

(A) for which the state may seek the death sentence under IC 35-50-2-9; and

(B) that have resulted in criminal charges being filed by the state; or

(3) racial considerations played a part in the state's decision to seek or impose the death sentence against the defendant.

(b) A defendant is not required to show a discriminatory motive, intent, or purpose on the part of any person to make a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence on the defendant.

Sec. 4. To rebut a prima facie showing that racial considerations played a part in the state's decision to seek or impose the death sentence, the state must establish by clear and convincing evidence that identifiable and pertinent factors not based on race persuasively explain the state's decision to seek or impose the death sentence.

Sec. 5. A defendant must do the following to raise a claim under this chapter:

(1) If the defendant is tried or sentenced to death after June 30, 2001, the defendant must file a motion to dismiss under IC 35-34-1-4 that includes an allegation that racial considerations played a part in the state's decision to seek or impose the death sentence on the defendant in violation of this chapter.

(2) If the defendant was tried or sentenced to death before July 1, 2001, the defendant must include an allegation that

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1 racial considerations played a part in the state's decision to
 2 seek or impose the death sentence on the defendant in
 3 violation of this chapter in:

4 (A) the defendant's first petition for post-conviction relief;
 5 or

6 (B) if post-conviction relief proceedings have been
 7 concluded, by tendering a successive petition for
 8 post-conviction relief at the defendant's first available
 9 opportunity.

10 SECTION 3. IC 35-50-2-3 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) A person who
 12 commits murder shall be imprisoned for a fixed term of fifty-five (55)
 13 years, with not more than ten (10) years added for aggravating
 14 circumstances or not more than ten (10) years subtracted for mitigating
 15 circumstances; in addition, the person may be fined not more than ten
 16 thousand dollars (\$10,000).

17 (b) Notwithstanding subsection (a), a person who was at least
 18 sixteen (16) years of age at the time the murder was committed may be
 19 sentenced to:

20 (1) death; or

21 (2) life imprisonment without parole;

22 under section 9 of this chapter unless a court determines under
 23 IC 35-36-9 that the person is a mentally retarded individual **or it is**
 24 **determined by a court under IC 35-36-10 that racial considerations**
 25 **played a part in the state's decision to seek or impose the death**
 26 **penalty.**

27 SECTION 4. IC 35-50-2-9 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 9. (a) The state may
 29 seek either a death sentence or a sentence of life imprisonment without
 30 parole for murder by alleging, on a page separate from the rest of the
 31 charging instrument, the existence of at least one (1) of the aggravating
 32 circumstances listed in subsection (b). In the sentencing hearing after
 33 a person is convicted of murder, the state must prove beyond a
 34 reasonable doubt the existence of at least one (1) of the aggravating
 35 circumstances alleged. However, the state may not proceed against a
 36 defendant under this section **to impose a death sentence** if a court
 37 determines at a pretrial hearing under:

38 (1) IC 35-36-9 that the defendant is a mentally retarded
 39 individual; or

40 (2) **IC 35-36-10 that racial considerations played a part in the**
 41 **state's decision to seek or impose the death penalty.**

42 (b) The aggravating circumstances are as follows:

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(1) The defendant committed the murder by intentionally killing the victim while committing or attempting to commit any of the following:

- (A) Arson (IC 35-43-1-1).
- (B) Burglary (IC 35-43-2-1).
- (C) Child molesting (IC 35-42-4-3).
- (D) Criminal deviate conduct (IC 35-42-4-2).
- (E) Kidnapping (IC 35-42-3-2).
- (F) Rape (IC 35-42-4-1).
- (G) Robbery (IC 35-42-5-1).
- (H) Carjacking (IC 35-42-5-2).
- (I) Criminal gang activity (IC 35-45-9-3).
- (J) Dealing in cocaine or a narcotic drug (IC 35-48-4-1).

(2) The defendant committed the murder by the unlawful detonation of an explosive with intent to injure person or damage property.

(3) The defendant committed the murder by lying in wait.

(4) The defendant who committed the murder was hired to kill.

(5) The defendant committed the murder by hiring another person to kill.

(6) The victim of the murder was a corrections employee, probation officer, parole officer, community corrections worker, home detention officer, fireman, judge, or law enforcement officer, and either:

- (A) the victim was acting in the course of duty; or
- (B) the murder was motivated by an act the victim performed while acting in the course of duty.

(7) The defendant has been convicted of another murder.

(8) The defendant has committed another murder, at any time, regardless of whether the defendant has been convicted of that other murder.

(9) The defendant was:

- (A) under the custody of the department of correction;
- (B) under the custody of a county sheriff;
- (C) on probation after receiving a sentence for the commission of a felony; or
- (D) on parole;

at the time the murder was committed.

(10) The defendant dismembered the victim.

(11) The defendant burned, mutilated, or tortured the victim while the victim was alive.

(12) The victim of the murder was less than twelve (12) years of

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age.

(13) The victim was a victim of any of the following offenses for which the defendant was convicted:

(A) Battery as a Class D felony or as a Class C felony under IC 35-42-2-1.

(B) Kidnapping (IC 35-42-3-2).

(C) Criminal confinement (IC 35-42-3-3).

(D) A sex crime under IC 35-42-4.

(14) The victim of the murder was listed by the state or known by the defendant to be a witness against the defendant and the defendant committed the murder with the intent to prevent the person from testifying.

(15) The defendant committed the murder by intentionally discharging a firearm (as defined in IC 35-47-1-5):

(A) into an inhabited dwelling; or

(B) from a vehicle.

(16) The victim of the murder was pregnant and the murder resulted in the intentional killing of a fetus that has attained viability (as defined in IC 16-18-2-365).

(c) The mitigating circumstances that may be considered under this section are as follows:

(1) The defendant has no significant history of prior criminal conduct.

(2) The defendant was under the influence of extreme mental or emotional disturbance when the murder was committed.

(3) The victim was a participant in or consented to the defendant's conduct.

(4) The defendant was an accomplice in a murder committed by another person, and the defendant's participation was relatively minor.

(5) The defendant acted under the substantial domination of another person.

(6) The defendant's capacity to appreciate the criminality of the defendant's conduct or to conform that conduct to the requirements of law was substantially impaired as a result of mental disease or defect or of intoxication.

(7) The defendant was less than eighteen (18) years of age at the time the murder was committed.

(8) Any other circumstances appropriate for consideration.

(d) If the defendant was convicted of murder in a jury trial, the jury shall reconvene for the sentencing hearing. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall

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conduct the sentencing hearing. The jury or the court may consider all the evidence introduced at the trial stage of the proceedings, together with new evidence presented at the sentencing hearing. The court shall instruct the jury concerning the statutory penalties for murder and any other offenses for which the defendant was convicted, the potential for consecutive or concurrent sentencing, and the availability of good time credit and clemency. The defendant may present any additional evidence relevant to:

(1) the aggravating circumstances alleged; or

(2) any of the mitigating circumstances listed in subsection (c).

(e) Except as provided by IC 35-36-9 and IC 35-36-10, if the hearing is by jury, the jury shall recommend to the court whether the death penalty or life imprisonment without parole, or neither, should be imposed. The jury may recommend:

(1) the death penalty; or

(2) life imprisonment without parole;

only if it makes the findings described in subsection (k). The court shall make the final determination of the sentence, after considering the jury's recommendation, and the sentence shall be based on the same standards that the jury was required to consider. The court is not bound by the jury's recommendation. In making the final determination of the sentence after receiving the jury's recommendation, the court may receive evidence of the crime's impact on members of the victim's family.

(f) If a jury is unable to agree on a sentence recommendation after reasonable deliberations, the court shall discharge the jury and proceed as if the hearing had been to the court alone.

(g) If the hearing is to the court alone, except as provided by IC 35-36-9 and IC 35-36-10, the court shall:

(1) sentence the defendant to death; or

(2) impose a term of life imprisonment without parole;

only if it makes the findings described in subsection (k).

(h) If a court sentences a defendant to death, the court shall order the defendant's execution to be carried out not later than one (1) year and one (1) day after the date the defendant was convicted. The supreme court has exclusive jurisdiction to stay the execution of a death sentence. If the supreme court stays the execution of a death sentence, the supreme court shall order a new date for the defendant's execution.

(i) If a person sentenced to death by a court files a petition for post-conviction relief, the court, not later than ninety (90) days after the date the petition is filed, shall set a date to hold a hearing to consider

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the petition. If a court does not, within the ninety (90) day period, set the date to hold the hearing to consider the petition, the court's failure to set the hearing date is not a basis for additional post-conviction relief. The attorney general shall answer the petition for post-conviction relief on behalf of the state. At the request of the attorney general, a prosecuting attorney shall assist the attorney general. The court shall enter written findings of fact and conclusions of law concerning the petition not later than ninety (90) days after the date the hearing concludes. However, if the court determines that the petition is without merit, the court may dismiss the petition within ninety (90) days without conducting a hearing under this subsection.

(j) A death sentence is subject to automatic review by the supreme court. The review, which shall be heard under rules adopted by the supreme court, shall be given priority over all other cases. The supreme court's review must take into consideration all claims that the:

(1) conviction or sentence was in violation of the:

(A) Constitution of the State of Indiana; or

(B) Constitution of the United States;

(2) sentencing court was without jurisdiction to impose a sentence; and

(3) sentence:

(A) exceeds the maximum sentence authorized by law; or

(B) is otherwise erroneous.

If the supreme court cannot complete its review by the date set by the sentencing court for the defendant's execution under subsection (h), the supreme court shall stay the execution of the death sentence and set a new date to carry out the defendant's execution.

(k) Before a sentence may be imposed under this section, the jury, in a proceeding under subsection (e), or the court, in a proceeding under subsection (g), must find that:

(1) the state has proved beyond a reasonable doubt that at least one (1) of the aggravating circumstances listed in subsection (b) exists; and

(2) any mitigating circumstances that exist are outweighed by the aggravating circumstance or circumstances.

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